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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Prevention of torture and ill-treatment of women deprived of their liberty*

I. Introduction

1. The present document is being issued pursuant to the mandate of the Subcommittee on Prevention of Torture as set out in article 11 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The Subcommittee has a number of years of experience in conducting visits to places of deprivation of liberty in States parties to the Optional Protocol in different regions of the world. It is undoubtedly an added advantage for a human rights treaty body to be able to carry out field missions and collect first-hand information through observation, individual and group interviews, and working meetings with the authorities and civil society organizations on the situation of persons deprived of their liberty and, on the basis of its analysis of this information, draft a visit report containing specific, contextualized recommendations on the prevention of torture and ill-treatment in the countries that it has visited.

3. In the course of this work, the Subcommittee has encountered specific situations involving persons deprived of their liberty who belong to groups that have historically been discriminated against, including women.

4. It should be acknowledged that, while torture has been a subject of great concern in international human rights law and the work of the human rights treaty bodies, the gender-specific aspect of torture has not been discussed in sufficient depth. As a result, the particular risks of torture or ill-treatment faced by women deprived of their liberty have received limited attention to date.[1]

5. The Subcommittee is aware that the torture and ill-treatment of women occur in a variety of situations, not only in prisons or other places of deprivation of liberty.

6. The general causes of torture and ill-treatment include society's tolerance and acceptance of violence as a means of "resolving" conflicts and the formation of hierarchical power relations whereby certain groups of persons, such as women, are scorned, undervalued, ignored, demonized or dehumanized. The mediate causes

* Document approved by the Subcommittee at its twenty-seventh session (16-20 November 2015).

[1] Association for the Prevention of Torture and Penal Reform International, *Women in Detention: A Guide to Gender-Sensitive Monitoring*, London, 2013, p. 5.

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include the denial of the practice of torture by the State and the impunity enjoyed by its perpetrators.[2]

7. The Committee against Torture has established that:

> "Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking."[3]

8. The Subcommittee wishes to make it clear that the present document focuses specifically on the situation of women deprived of their liberty.

9. Women deprived of their liberty constitute a minority in the world's prison population (between 2 and 9 per cent of the general prison population in most countries).[4] In the context of deprivation of liberty, women's rights have, at best, been subsumed under the recognized rights of a supposedly neutral individual who is, in practice, based on a male model or they have simply been ignored or disregarded; in other words, the treatment of women's rights has been characterized by a male-centred approach. For example, the Subcommittee has not found any systematic attempt on the part of States to address female criminality, which is closely related to the satisfaction of the basic needs of the families of indigent female heads of household. Nor has it found that any consideration has been given to situations specifically related to women, such as their involvement in a large proportion of small-scale drug trafficking offences, their more limited access to justice, their inability to afford bail and the augmented stigmatization that they incur for having transgressed gender roles.

10. It was not until December 2010 that the United Nations General Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules),[5] which address the specific — and long neglected — needs of women in detention.

11. Against this background, the Subcommittee has set itself the task of analysing how the particular risks of torture and ill-treatment faced by women deprived of their liberty have been addressed during its visits and how it might set about incorporating a gender-sensitive approach into its efforts to prevent torture.

II. The obligation to prevent torture and ill-treatment

12. Article 2, paragraph 1, of the Convention provides that each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

13. Consequently, all States parties to the Optional Protocol and the Convention have an obligation to prevent torture and ill-treatment, whether committed by public officials or by private individuals. The Committee emphasizes that it is the responsibility of States parties to prevent acts of torture and ill-treatment in all

[2] See the fifth annual report of the Subcommittee (CAT/C/48/3), para. 67.

[3] See general comment No. 2 of the Committee against Torture on the implementation of article 2 by States parties (CAT/C/GC/2), para. 18.

[4] United Nations Office on Drugs and Crime, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, 2008, p. 2. Available from: https://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf.

[5] General Assembly resolution 65/229 (see the annex).

contexts of deprivation or restriction of liberty, including, for example, in prisons, hospitals, schools, institutions that engage in the care of children, older persons, persons with mental illness or persons with disabilities, in military service and in other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.[6]

14. The Subcommittee is of the view that the obligation to prevent torture and ill-treatment should embrace "as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance but that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific." [7]

15. The Committee recognizes that certain minorities or marginalized individuals or populations are especially at risk of torture and that their protection is therefore a part of the obligation to prevent torture or ill-treatment.[8] In addition, the Subcommittee recognizes that, although all people in detention are vulnerable, some persons are particularly so, such as women, young people, members of minorities, foreign nationals, persons with disabilities and persons with acute medical or psychological dependencies or conditions.[9]

16. The Committee has noted that State party reports frequently lack sufficient specific information on the implementation of the Convention with respect to women. It has emphasized that gender is a key factor which intersects with other factors such as race, nationality, religion, sexual orientation, age and immigrant status to determine the ways in which women and girls may be subject to or at risk of torture or ill-treatment. Such factors include deprivation of liberty.[10] The Subcommittee considers that other factors, such as gender identity, also need to be taken into account.

III. The relationship between torture and discrimination against women

17. The Committee affirms that the principle of non-discrimination is a basic and general principle in the protection of human rights and that it is fundamental to the interpretation and application of the Convention. The Convention prohibits specified acts when carried out for "any reason based on discrimination of any kind". The Committee emphasizes that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.[11]

18. Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human

[6] CAT/C/GC/2, para. 15.
[7] See Subcommittee paper on the approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/OP/12/6), para. 3.
[8] CAT/C/GC/2, para. 21.
[9] CAT/OP/12/6, para. 5 (j).
[10] CAT/C/GC/2, para. 22.
[11] Ibid., para. 20.

rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

19. The Committee on the Elimination of Discrimination against Women maintains that, although the Convention refers only to sex-based discrimination against women, a comprehensive interpretation of the Convention indicates that it also covers gender-based discrimination against women. Whereas the term "sex" refers to biological differences between men and women, the term "gender" refers to socially constructed identities, attributes and roles of women and men and the social and cultural meaning that society attaches to these biological differences, which result in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.[12]

20. The Committee on the Elimination of Discrimination against Women has emphasized that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, is discrimination within the meaning of the Convention. These rights and freedoms include the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment. Gender-based violence — that is, violence that is directed against a woman because she is a woman or that affects women disproportionately — includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other forms of deprivation of liberty.[13]

21. In this context, the Subcommittee on Prevention of Torture considers that the principle of equality and non-discrimination encompasses both the prohibition of differential treatment when the latter is arbitrary and imposes a disadvantage on a woman or group of women that limits or nullifies the exercise of human rights and the recognition of differences when such recognition is a reasonable, necessary and proportionate means of achieving the effective enjoyment of human rights.

IV. The situation of women deprived of their liberty

22. The Subcommittee has conducted over 20 regular visits to States parties during which it has gone to various places of deprivation of liberty, including prisons, police stations, centres for juvenile offenders, shelters and psychiatric hospitals.

23. It has on several occasions observed situations in which women deprived of their liberty have been subject to ill-treatment or even torture.

A. Violence

24. In many of the countries that it has visited, the Subcommittee has been apprised of reports from women deprived of their liberty, including pregnant women, that they have been subject to ill-treatment and physical torture, particularly at the time of arrest and during investigations.

25. More frequently, such claims concern various forms of sexual violence, including sexual extortion, sexual abuse and even rape committed by police officers

[12] General recommendation No. 28 of the Committee on the Elimination of Discrimination against Women on the core obligations of States parties under article 2 of the Convention (CEDAW/C/GC/28 and Corr.1), para. 5.

[13] General recommendation No. 19 of the Committee on the Elimination of Discrimination against Women on violence against women (A/48/37, chap. I), paras. 6 and 7.

and male prison staff. The Subcommittee has come across situations where female detainees were encouraged to prostitute themselves. The Subcommittee has also encountered cases of sexual violence between patients and the inappropriate use of force by the staff of a psychiatric hospital, as well as cases in which outsiders had been able to enter a hospital and abuse patients because of a lack of surveillance of the hospital perimeter.

26. In some cases, the measures supposedly taken to protect women who have suffered from acts of violence and have reported them while deprived of their liberty can lead to further violations of their rights as, for example, when women are placed in isolation in the name of such "protective measures".

27. In some States parties, women prisoners subject to searches are required to undress in public, to squat and to undergo intimate body searches, including invasive probing of the vagina and anus. Such degrading practices are also carried out on women visitors to detention facilities, sometimes by male guards. The Inter-American Court of Human Rights, making use of the jurisprudential and legal criterion that prevails in the realms of both international criminal law and comparative criminal law, considers that rape does not necessarily entail non-consensual sexual relations involving vaginal penetration, as has traditionally been thought. The Court has stated the following: "Sexual rape must also be understood as [an] act of vaginal or anal penetration, without the victim's consent, through the use of other parts of the aggressor's body or objects ...".[14] The Subcommittee agrees that vaginal and anal inspections can constitute sexual violence and must therefore be prohibited.[15]

B. Health

28. Women's right to health is a critical issue in places of deprivation of liberty, particularly in mixed facilities, because there are often no female health professionals available to provide adequate care and follow-up. In some instances, female doctors visit prisons between once a week and once a month to provide women inmates with health care, which is not enough. There are often no gynaecologists or obstetricians available in prison facilities to provide timely and appropriate care to pregnant or breastfeeding women or, more generally, to address the sexual and reproductive health needs of female inmates. The fact that pregnant or breastfeeding women require a special diet is generally not taken into account. In some prisons, sanitary pads are not made available free of charge and have to be provided by relatives and friends or sometimes by non-governmental organizations (NGOs), religious groups or volunteers.

29. In men's prisons that have been adapted to accommodate an area or wing for women, female inmates have limited access to water, since sanitation facilities are located in areas reserved for men. As a result, women either have to rely on security personnel to bring hoses to fill water containers or they have to fill the containers themselves but may do so only at certain times so as to avoid contact with male inmates.

30. During some visits, the Subcommittee has heard reports of suicides and suicide attempts by women deprived of their liberty. In many instances, these kinds of cases are linked to such factors as harsh conditions of imprisonment, severely limited time spent outside of the cells, few or no opportunities for work, education or recreation

[14] Inter-American Court of Human Rights, *Miguel Castro Castro Prison v. Peru* criminal case, judgement of 25 November 2006, para. 310.

[15] See the Subcommittee's reports on its visits to Argentina (CAT/OP/ARG/1, para. 72) and Brazil (CAT/OP/BRA/1, para. 119).

and visiting restrictions. The Subcommittee has found that, in some cases, the institutional response to these problems has been to resort to the excessive use of psychopharmacological drugs to subdue women, which is entirely unacceptable.

C. Relations with family members and partners

31. The Subcommittee has found that one of the most pressing concerns for women deprived of their liberty is the situation of their minor children, in particular children of a very young age. It is undoubtedly the case that, because of the prevalence of gender role stereotypes of women as caregivers, a mother's absence can lead to her children being deprived of care. This is even more likely to be the case given the selective nature of the criminal justice system, which means that most persons who are deprived of liberty, including the women among them, come from the poorest sectors of society.

32. In some States parties, small children are allowed to remain with their mothers. However, these children are not always budgeted for by the institution and are therefore not considered when food rations are established. As a result, mothers have to share their food and reduce their own ration, with particularly serious consequences for those who are breastfeeding. In some of the detention facilities that the Subcommittee has visited, sufficient space is not even set aside to accommodate these children, with the result that they are subject to the same overcrowded conditions, which are themselves already a cause for concern. In some instances, children either receive no health care at all or are treated less often than recommended. Furthermore, there are problems with the supply of vaccines and/or there are no paediatricians.

33. The Subcommittee has received disturbing reports of women with children in prison being deprived of their right to keep custody of their child once the child reaches the age of 2 and, in some cases, of the children being put up for adoption. Such a practice clearly amounts to psychological torture.

34. The Subcommittee has at times received complaints of visiting restrictions being used as a means of punishing women, which causes them to be overcome by anger, sadness and frustration.

35. It should also be borne in mind that, because women are a minority within the total population of persons deprived of liberty, they are held in very few establishments, which are often located a long way from their families, who therefore have great difficulty in visiting them regularly.

36. A further factor is that women who have relatives who have been deprived of their liberty may suffer various types of ill-treatment if they have to travel long distances to visit their loved ones in very distant jails; this may occur, for example, when their loved ones are subject to high-security conditions of detention.

37. With regard to conjugal visits, the Subcommittee has observed discriminatory treatment in some cases. In one women's prison, long visits by civil partners were prohibited and the price for the use of the facilities for conjugal visits was prohibitive and higher than in men's prisons. In another women's detention facility, the procedures involved in applying for permission for conjugal visits were extremely complicated. This stood in contrast to the ease with which men obtained approval for such visits. As a result, only a very small percentage of women were able to have the opportunity for this type of emotional contact, and the long waits for responses to their applications caused them anxiety and frustration.

D. Work, educational and recreational activities

38. In some of the facilities that it has visited, the Subcommittee has found that there were few or no work opportunities for women inmates.

39. This situation sometimes arises when women are held in mixed prisons which were not originally designed to house them but which have been converted for that purpose owing to a shortage of the necessary infrastructure. In order to prevent contact between male and female inmates, women held in these improvised facilities are not given access to common areas where work, educational, exercise, sports and recreational activities take place. Since, in many countries, working or attending educational programmes are important factors in determining eligibility for sentence reduction and parole, women are even more adversely affected by this lack of access.

40. One clear example of gender discrimination encountered by the Subcommittee involved young offenders. In that case, male teenage inmates were receiving schooling with the support of a United Nations body, while their female counterparts had no access to the educational programme in question.

41. The Subcommittee has also encountered cases of labour exploitation and forced labour among women deprived of their liberty, where the women were required to undertake 12 hours of exhausting work every day — carrying heavy loads without any protective clothing — followed by a further two hours of work cleaning the prison facilities. Remuneration for this work was, at best, minimal. If the women complained about the situation or refused to work, they were forced to perform degrading tasks as a punishment, such as cleaning toilets that were in an appalling state without gloves or any other form of protection.

42. In other cases, the Subcommittee has found that the work available to women deprived of their liberty reinforces gender stereotypes associated with traditional roles in the family and society (weaving, macramé, handicrafts, hairdressing, washing and ironing), whereas men have more access than women to opportunities to obtain a higher education and to participate in sports and recreational activities.

E. Separation of men and women

43. In several places of deprivation of liberty, the Subcommittee noted that the rule that men and women have to be separated was not observed. It was even more common to find male staff carrying out security duties because of a lack of female guards. In some cases, however, the observance of this rule can give rise to other problems, such as in the case of mixed establishments, where it may lead to situations of de facto isolation if only one or a few women are being held there.

44. The Subcommittee has on occasion noted that adult women are not separated from teenage girls. In some cases, minors had become virtual slaves to adult female inmates in order to supplement their daily food ration.

F. Multiple discrimination

45. The Subcommittee has observed that a combination of various factors can increase the likelihood of ill-treatment and torture. This may occur, for example, when gender is combined with sexual orientation, age, the type of offence committed, exceptional detention regimes (such as *arraigo*, or pre-charge detention, for example), ethnicity, migration status and mental illness.

46. For instance, in the case of sexual orientation, the Subcommittee has observed that, in some establishments, involvement in lesbian relationships, whether between adult women or teenage girls, is considered an offence and is therefore punished. In some cases, any sign of affection results in the imposition of solitary confinement. Other indications of discrimination against lesbians include the prohibition of physical contact, denial of the right to intimate visits and segregation in religious and cultural activities.

47. The Subcommittee has also found cases in which a large number of persons deprived of their liberty belong to an ethnic group that has historically suffered discrimination. Although there were special units in some men's prisons to address the situation of this group, no such arrangements existed in women's prisons.

48. In the course of some visits, the Subcommittee heard consistent allegations that women with mental disabilities were ill-treated, allegedly to keep them subdued.

V. Prevention of torture and ill-treatment of women deprived of their liberty

49. The purpose of this review of the Subcommittee's experiences during its visits to places of deprivation of liberty where women are present has been to offer a systematic overview of its findings with regard to this particular group as a means of identifying the particular issues to be taken into account during visits by any national or international body involved in the prevention of torture and ill-treatment. which will serve as a basis for the formulation of relevant and effective recommendations.

50. It is vital that the unequal power relationships between men and women that remain entrenched to a greater or lesser extent in nearly all parts of the world are borne in mind when visiting centres of deprivation of liberty and drafting reports and recommendations in that connection.

51. It should be recalled that gender asymmetries are expressed through gender-based violence and through discrimination in the provision of access to the rights to work, education, health, recreation, sexuality and family relations, among others. Such forms of violence and discrimination are exacerbated when combined with other factors, such as social class, ethnicity, age, sexual orientation, nationality, migration status, health status, type of offence committed and exceptional regimes of detention. In each case, consideration will be given to whether or not such forms of violence and discrimination, which may amount to torture and ill-treatment, are in evidence, and situation-specific recommendations will be made.

52. The Subcommittee has included a broad recommendation in several of its visit reports regarding the development of a gender-sensitive prison policy in accordance with the Bangkok Rules. The Rules are without doubt a vital benchmark for the implementation of the minimum international standards for the protection of women deprived of their liberty and the prevention of their ill-treatment and torture.

53. When, in response to allegations of torture and ill-treatment of women deprived of their liberty, such bodies make recommendations to the States parties concerned, it is important for them to stress the duty of States parties to investigate such claims of human rights violations, punish the perpetrators and provide reparation to the victims and to uphold the prohibition of discrimination on the basis of gender.

54. The Subcommittee recalls that, among the basic guarantees that apply to all persons deprived of their liberty, including women, are the availability of judicial and other remedies that may be used by persons at risk of torture and ill-treatment in order

to have their complaints promptly and impartially examined, to defend their rights and to challenge the legality of their detention or treatment.[16]

55. One of the most persistent problems encountered by the Subcommittee in the course of its visits is the poor material conditions existing in places of detention, which are often accompanied by overcrowding. This serious problem also arises in centres of deprivation of liberty for women.

56. Nevertheless, since it is a critical and persistent problem, it is worth recalling that detention conditions not only raise issues of cruel, inhuman or degrading treatment or punishment but in some circumstances can also be a means of torture, if used in a manner which accords with the provisions of article 1 of the Convention.[17]

57. Accordingly, recommendations regarding conditions of detention play a critical role in effective prevention and will touch on a wide variety of issues, including matters relating to physical conditions, the reasons for, and levels of, occupancy and the provision of, and access to, a wide range of facilities and services.[18]

[16] See CAT/C/GC/2, para. 13.
[17] See CAT/OP/12/6, para. 5 (d).
[18] Ibid.